

Albright, Justice, concurring in part and dissenting in part:

I concur with the majority's determination that the decision of the lower court in this matter should be reversed. The Department of Health and Human Resources presented evidence in the adjudicatory phase sufficient to warrant a finding of neglect. The determination of the appropriate next step, however, is the focus of my disagreement with the majority opinion.

While the extreme circumstances of this case may indeed warrant termination of parental rights, that determination must be made in conformity with the procedures outlined in the West Virginia Code, the West Virginia Rule of Procedure for Child Abuse and Neglect Proceedings, and the numerous opinions authored by this Court. As an appellate tribunal, this Court does not have authority to issue such a determination where the lower court has not proceeded to the dispositional hearing phase.¹ The timely,

¹As this Court stated in *In re Beth Ann B.*, 204 W.Va. 424, 513 S.E.2d 472 (1998),

The statutory scheme applicable in child abuse and neglect proceedings provides for an essentially two phase process. The first phase culminates in an adjudication of abuse and/or neglect. The second phase is a dispositional one, undertaken to achieve the appropriate permanent placement of a child adjudged to be abused and/or neglected.

Id. at 427, 513 S.E.2d at 475 (citations omitted).

(continued...)

effective, and detailed procedures enumerated by statute, rule, and judicial opinion must be observed. As this Court so distinctly stated in syllabus point two of *In re Beth Ann B.*, 204 W.Va. 424, 513 S.E.2d 472 (1998), “In a child abuse and/or neglect proceeding, even where the parties have stipulated to the predicate facts necessary for a termination of parental rights, a circuit court must hold a disposition hearing, in which the specific inquiries enumerated in Rules 33 and 35 of the *Rules of Procedure for Child Abuse and Neglect Proceedings* are made, prior to terminating an individual's parental rights.”

This Court explicitly stated in syllabus point two of *In re Willis*, 157 W.Va. 225, 207 S.E.2d 129 (1973), that this is an issue of constitutional dimension: “West Virginia Code, Chapter 49, Article 6, Section 2, as amended, and the Due Process Clauses of the West Virginia and United States Constitutions prohibit a court or other arm of the State from terminating the parental rights of a natural parent having legal custody of his child, without notice and the opportunity for a meaningful hearing.”

This Court has characterized a dispositional hearing as a “mandatory prerequisite” to the termination of parental rights. *Beth Ann B.*, 204 W.Va. at 428, 513 S.E.2d at 476. In our recent decision in *State ex rel. Chastity D. v. Hill*, 207 W.Va. 358, 532 S.E.2d 358 (2000), we held that “even where there are written relinquishments of parental rights, the circuit court is required to conduct a disposition hearing, pursuant to West Virginia Code § 49-6-5 (1999) and Rules 33 and 35 of the West

¹(...continued)

Virginia Rules of Procedure for Child Abuse and Neglect Proceedings. . . .” *Id.* at 364, 532 S.E.2d at 364.

These rules and statutory guidelines are essential, and this Court has consistently treated them as mandatory. In syllabus point five of *In re Edward B.*, ___ W.Va. ___, ___ S.E.2d ___, 2001 WL 1402147 (No. 28732, Nov. 8, 2001), this Court recently explained as follows:

Where it appears from the record that the process established by the Rules of Procedure for Child Abuse and Neglect Proceedings and related statutes for the disposition of cases involving children adjudicated to be abused or neglected has been substantially disregarded or frustrated, the resulting order of disposition will be vacated and the case remanded for compliance with that process and entry of an appropriate dispositional order.

Neither the lower court system nor the Department of Health and Human Resources should interpret the majority decision as an excuse to disregard the guidance provided by this Court or the requirements enumerated by statute and rule with regard to dispositional hearings. Egregious facts adduced on the issue of disposition may indeed justify termination of parental rights. However, it is not a determination to be made here at this time. This Court should require adherence to the procedural and substantive protections provided by the Constitution, our statutes, court rules and cases. Accordingly, I respectfully dissent from the portion of the majority opinion which directs the lower court to terminate parental rights. To comply with the mandates of statute, rule, and this Court, the lower court must hold a dispositional hearing prior to termination.

I am authorized to state that Justice Starcher joins in this concurring and dissenting opinion.